

AMENDED IN ASSEMBLY JUNE 30, 2002

AMENDED IN SENATE MAY 24, 2002

AMENDED IN SENATE APRIL 25, 2002

AMENDED IN SENATE MARCH 21, 2002

**SENATE BILL**

**No. 1344**

**Introduced by Senator Haynes**

February 4, 2002

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An act relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1344, as amended, Haynes. Health care: denial of desired life-sustaining health care.

Existing law, the Health Care Decisions Law, authorizes a health care provider and a health care institution to decline to comply with a health care instruction or decision of a patient for specified reasons, including that it requires medically ineffective health care or health care that is contrary to generally accepted health care standards.

This bill would require the Health and Human Services Agency to convene a work group consisting of specified members, *subject to obtaining private or federal funds for this purpose*. The bill would require the work group to obtain a copy of the policies of California health care institutions pertaining to the denial of desired life-sustaining health care and to conduct a study of various issues regarding the implementation of those policies based on a 30% sampling of health care providers. The bill would also require the work group to report its findings and recommendations on designated issues to the Legislature

prior to January 1, 2004, and would limit the total cost of the study to not more than \$280,000 over a 2-year period.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares the  
2 following:

3 (1) A controversy currently exists as to whether health care  
4 providers and institutions are denying desired life-sustaining  
5 health care on the basis that the care is “futile,” “inappropriate,”  
6 “medically ineffective,” “nonbeneficial,” or “contrary to  
7 generally accepted health care standards.”

8 (2) Section 4615 of the Probate Code defines “health care” as  
9 any care, treatment, or procedure to maintain, diagnose, or  
10 otherwise affect a patient’s physical or mental condition.

11 (3) Except as provided in Sections 4734 and 4735 of the  
12 Probate Code, Section 4733 of that code requires a health care  
13 provider and a health care institution providing care to a patient to  
14 comply with an individual health care instruction of the patient and  
15 with a reasonable interpretation of that instruction made by a  
16 person then authorized to make health care decisions for the  
17 patient and to comply with a health care decision made for the  
18 patient by a person then authorized to make those decisions for the  
19 patient to the same extent as if the decision had been made by the  
20 patient while having capacity to make health care decisions for  
21 himself or herself.

22 (4) Section 4734 of the Probate Code allows a health care  
23 provider to decline to comply with an individual health care  
24 instruction or health care decision for reasons of conscience and  
25 allows a health care institution to decline to comply with an  
26 individual health care instruction or health care decision if the  
27 instruction or decision is contrary to a policy of the institution that  
28 is expressly based on reasons of conscience, and the policy was  
29 timely communicated to the patient or to a person then authorized  
30 to make health care decisions for the patient.

31 (5) Section 4735 of the Probate Code allows a health care  
32 provider and a health care institution to decline to comply with an  
33 individual health care instruction or health care decision that



1 requires medically ineffective health care or health care contrary  
2 to generally accepted health care standards applicable to the health  
3 care provider or institution.

4 (6) Section 4736 of the Probate Code requires a health care  
5 provider or health care institution that declines to comply with an  
6 individual health care instruction or health care decision to take all  
7 of the following actions:

8 (A) Promptly inform the patient, if possible, and any person  
9 then authorized to make health care decisions for the patient of the  
10 decision to decline the health care instruction or decision.

11 (B) Immediately make all reasonable efforts to assist in the  
12 transfer of the patient to another health care provider or institution  
13 that is willing to comply with the health care instruction or  
14 decision unless the patient or person then authorized to make  
15 health care decisions for the patient refuses assistance.

16 (C) Provide continuing care to the patient until a transfer can  
17 be accomplished or until it appears that a transfer cannot be  
18 accomplished.

19 (D) Continue appropriate pain relief and other palliative care.

20 (7) Existing law does not define “futile care,” “inappropriate  
21 care,” “medically ineffective care,” “nonbeneficial care,” or  
22 “care which is contrary to generally accepted health care  
23 standards.”

24 (b) It is the intent of the Legislature that the Health and Human  
25 Services Agency convene a work group to determine the following  
26 matters:

27 (1) Whether patients are being denied desired life-sustaining  
28 health care and, if so, the basis for those denials.

29 (2) Whether health institutions have policies governing the  
30 denial of desired life-sustaining health care and, if so, the  
31 mechanism by which those policies are communicated to patients  
32 or to a person then authorized to make health care decisions for the  
33 patient.

34 SEC. 2. (a) The Health and Human Services Agency shall  
35 convene a work group that shall include, but not be limited to, the  
36 following members:

37 (1) A member appointed by the Medical Board of California.

38 (2) A member appointed by the State Department of Health  
39 Services.

- 1 (3) A member appointed by the Department of Managed  
2 Health Care.
- 3 (4) A member appointed by the Department of Insurance.
- 4 (5) One patient advocate appointed by the Majority Leader of  
5 the Senate.
- 6 (6) One patient advocate appointed by the Minority Leader of  
7 the Senate.
- 8 (7) One patient advocate appointed by the Majority Leader of  
9 the Assembly.
- 10 (8) One patient advocate appointed by the Minority Leader of  
11 the Assembly.
- 12 (9) Experts in the field of ethics and medicine.
- 13 (10) *Two public members appointed by the Governor.*
- 14 (b) The work group shall obtain copies of the policies of  
15 California health care institutions that pertain to the denial of  
16 desired life-sustaining health care and shall conduct a study on a  
17 30-percent sampling of health care providers to determine the  
18 following matters:
  - 19 (1) The policy of each institution regarding the denial of  
20 desired life-sustaining health care.
  - 21 (2) The definitions of terms used in that policy.
  - 22 (3) The procedures available to patients or their  
23 decisionmakers to resolve disputes regarding the denial of desired  
24 life-sustaining health care and the authority who makes the final  
25 decision if a dispute cannot be resolved.
  - 26 (4) The number of patients, if any, who have been denied  
27 desired life-sustaining health care in California based upon a  
28 denial of care policy.
  - 29 (5) The number of patients, if any, who have been denied  
30 desired life-sustaining health care that would be considered a  
31 generally accepted treatment protocol for the disease of the patient  
32 who was denied that care because of the patient's physical or  
33 mental condition, race, gender, sexual orientation, *socioeconomic*  
34 *status*, disability, age, or any other discriminatory basis, and, to the  
35 extent practicable, the basis of the denial.
  - 36 (6) The number of patients, if any, or their decisionmakers who  
37 have used an independent medical review process or have initiated  
38 a legal action in order to obtain desired life-sustaining health care.
  - 39 (7) Whether existing independent medical review, grievance,  
40 utilization review, and second opinion processes are adequate for

1 patients or their decisionmakers who have sought review of the  
2 denial of desired life-sustaining health care decisions.

3 (c) (1) The work group shall prepare a report that includes, but  
4 is not limited to, the following matters:

5 (A) The results of its findings pertaining to the matters  
6 described in subdivision (b).

7 (B) Recommendations for amending existing state law to  
8 protect the right of patients to receive desired life-sustaining health  
9 care.

10 (C) Recommendations for civil penalties for the failure to  
11 comply with existing law.

12 (D) Recommendations for the definition of “futile care.”

13 (2) The work group shall submit this report to the Legislature  
14 prior to January 1, 2004.

15 (d) The total cost of the study shall be not more than one  
16 hundred forty thousand dollars (\$140,000) per year for two years,  
17 for a total cost of not more than two hundred eighty thousand  
18 dollars (\$280,000). *This section shall be implemented only to the*  
19 *extent that the agency obtains private or federal funding for the*  
20 *purposes of this section.*

